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TAGS: [KIPR](#) [ECON](#) [JP](#)
SUBJECT: RECORD INDUSTRY WORRIES ON IP MULTICAST
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REF: Ereshefsky e-mails 4/13 and 4/14/06

¶1. This is an action request please see paragraph 8.

¶2. SUMMARY: Three Japanese government working groups are addressing copyright issues for IP multicasting and are leaning towards adopting a change that would probably eliminate the ability of the U.S. recording industry to retain its rights in the re-transmission of programs via multicasting, by treating multicasting the same as broadcasting and cable. The multicasting providers (see definition for IP multicast at end of cable) are pushing for this as a way to remove what they say is the onerous burden of obtaining copyrights clearances for their programs. Industry tells us that the Cabinet's Intellectual Property Strategy Headquarters (IPSH) is aggressively pushing for this change because the telecoms companies have convinced them that the change is necessary to open the way for IP (Internet Protocol) broadcasting, part of the much-anticipated convergence of communications and the internet. Although this problem may not cause big losses for the recording industry in the short term because multicasting is still small and they do not make much under current broadcasting and cable rules, there is the potential for losing control over digital copies in the future. As changes are due to be drafted by May 30, USG must decide quickly if and how it wishes to respond.
End Summary

¶3. The Recording Industry Association of Japan (RIAJ) explained in a meeting on April 12 that the change that IPSH, Agency for Cultural Affairs (ACA aka Bunkacho), and Ministry of Communications and Internal Affairs (MIC) working groups are studying would permit the same treatment under copyright law for "interactive transmission" including simulcast, webcast, and IP multicasting, as that which currently applies to broadcasting (terrestrial or satellite TV, radio) and cablecast. Whereas sound-recordings used in multicasting now have exclusive rights over (a) re-transmission of broadcast, (b) use of records in original programs, and (c) ephemeral recordings, these would be reduced to only a right of remuneration, paid after transmission for (b). However, RIAJ pointed out, only Japanese domestic recordings, and not the U.S. repertoire, would be eligible for the remuneration right because the United States is not a party to the Rome Convention.

¶4. RIAJ has been defending the recording industry position in meetings with the working groups, arguing that the problem can be resolved without resorting to a change in the copyright law. In order to address the

complaints about a cumbersome rights clearance process for the multicasting companies (2 NTT subsidiaries, KDDI, and BB Yahoo) RIAJ is rushing to launch a collective licensing system in May which will include all kinds of performers, musicians, and actors. However, RIAJ says that it is not optimistic about turning the proposal around because IPSH and the broadcasters responded in meetings that even the new collective licensing system will not be able to cover all domestic and international repertoire. RIAJ is also studying whether or how the change would be in violation of international treaties.

15. At this point, the Agency for Cultural Affairs told RIAJ, there are still three options on the table for the treatment of recordings, of which only the first option appears to be acceptable to U.S. industry:

(1) Retaining the current system for multicasting which recognizes the "right of making available", (which the Japanese call the "right of making transmittable") using the new collective licensing system.

(2) Change from the current system for multicasting to the cable casting rules, but with no rights for re-transmission.

(3) Change to the cablecasting rules but retaining the right of remuneration for re-transmission (which U.S. industry would not be able to claim.)

16. RIAJ said that the cable industry, which wants to ward off competition from multicasting, supports their position on the issue, but the recording industry is otherwise isolated because other rights holders, such as authors, will retain their rights. RIAJ felt that IPSH and MIC have been pressured by broadcasters and telecoms companies and have decided it is more important to facilitate development of new types of broadcasting. ACA's position is neutral because it is more attuned to the concerns of the rights holders. This whole debate is arising now because the GOJ has decided to shift all terrestrial TV to digital TV by 2011 and, in order to resolve reception problems in some areas, to promote re-transmission of digital TV over IP multicasting over DSL or FTTH (optical fiber-to-the-home).

17. It is difficult for the Embassy to assess what impact the proposed change would have on the recording industry and what losses it might suffer. Under current Japanese law, the U.S. recording industry has full rights in multicasting -- which is not yet very widespread -- but gets little or nothing from broadcasts or cablecasts. Moreover, currently IP multicasting uses set-top boxes which do not allow for digital copying. However, this is expected to change in the near future and RIAJ fears it will become easy for IP multicast providers to launch sound-recording streaming which will not be covered by exclusive rights. This would enable massive digital piracy ("stream ripping") and leave open the ability to make massive "ephemeral recordings" (a form of temporary copy that is kept in the webcaster's server to transmit sound recordings.)

18. ACA is scheduled to draft its recommendations by May 30. After a report is drafted in June there will be a call for public comments mid-June to mid-July. The plan is have a draft law to submit to the Diet in the Fall. Embassy will be meeting with ACA shortly to find out more about the proposed changes in the law. Embassy would like to discuss the issue with the three ministries/agencies involved (IPSH, MIC, Bunkacho) as soon as possible and would appreciate comments, analysis, and talking points from interested USG agencies on this issue.

19. Note on IP Multicasting: IP multicasting differs from the usual point-to-point internet streaming in which the ISP provides service to individual users and requires

huge bandwidths. IP Multicast is a bandwidth-conserving technology that reduces traffic by simultaneously delivering a single stream of information to thousands of recipients in a local or wide-area network

SCHIEFFER